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Supreme Court, U.S.
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No. 02-1541

In The
Supreme Court of the United States

STATE OF IOWA,

Petitioner,

v.

FELIPE EDGARDO TOVAR,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Iowa

JOINT APPENDIX

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RELEVANT DOCKET ENTRIES

12/14/00	Trial Information, *State v. Tovar*, Johnson County No. OWCR057355, Count I. Operating While Intoxicated, Third Offense; Count II. Driving While Barred
3/22/00	Motion for Adjudication of Law Points, No. OWCR057355, seeking to bar use of Story County conviction OWCR023989 for enhancement purposes.
4/6/01	State's Response to Motion for Adjudication of Law Points
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5/14/01	Ruling, No. OWCR057355, On Application for Adjudication of Law Points, denying Tovar relief; waiver of counsel in 1996 Story County OWCR024989 voluntary, knowing and intelligent.
5/25/01	Verdicts and Orders, No. OWCR057355, convicting Tovar of Operating While Intoxicated and Driving While Barred; setting sentencing.
9/28/01	Entry of Judgments, No. OWCR057355; On Count I sentencing Tovar to 180 day jail term, all but 30 days suspended, $2500 fine plus surcharges; On Count II sentencing Tovar to 30 days jail, credit for time served, to run concurrent with Count I, $500 suspended fine.
10/01/01	Notice of Appeal, No. OWCR057355

6/19/02 Decision of Iowa Court of Appeals, No. 2-330/01-1558, AFFIRMED judgment and sentence of Johnson County District Court.

9/20/02 Supreme Court Order, No. 01-1558, Johnson County No. OWCR057355, granting further review, no supplemental briefs, no oral argument.

1/23/03 Decision of Iowa Supreme Court, No. 168/01-1558, DECISION OF COURT OF APPEALS VACATED; JUDGMENT OF DISTRICT COURT REVERSED AND CASE REMANDED. Remand for entry of judgment without consideration of defendant's prior OWI conviction.

2/13/03 *Procedendo*, No. -01-1558, Johnson County No. OWCR057355

MOTION FOR ADJUDICATION OF LAW POINTS

(Filed March 22, 2001)

IN THE IOWA DISTRICT COURT IN
AND FOR JOHNSON COUNTY

STATE OF IOWA, Plaintiff, vs. FELIPE TOVAR, Defendant.	)))))))	No. OWCR057355 MOTION FOR ADJUDICATION OF LAW POINTS

COMES NOW the defendant through counsel, pursuant to Iowa Rule of Civil Procedure 105 and Iowa Rule of Criminal Procedure 10, and states the following to the Court:

1. In Count I of the Trial Information the defendant is charged with the crime of Operating While Under the Influence, Third Offense, for an incident occurring on December 7, 2000. The State relies on Story County case number OWCR023989 as one of two prior OWI convictions to enhance Count I in the instant case to a third offense under Iowa Code section 321J.2.

2. Story County case number OWCR023989 may not be used for enhancement purposes, because in OWCR023989, the defendant neither was represented by counsel nor made a full knowing, intelligent, and voluntary waiver of counsel. *See* Iowa Rule of Criminal Procedure 18(9).

3. The State has the burden of proving the validity of any waiver of right to counsel. *State v. Rater*, 568 N.W.2d 655, 660 (Iowa 1997).

4. Waiver of the Sixth Amendment right to counsel is invalid unless the court makes the defendant aware of the dangers and disadvantages of self-representation, so that the record will establish he knows what he is doing and his choice is made with eyes open. *State v. Rater*, 568 N.W.2d 655, 658 (Iowa 1997); *State v. Wiese,* 587 N.W.2d 488, 490 (Iowa App. 1998).

5. Waiver of Sixth Amendment right to counsel cannot be presumed from a silent record. *State v. White*, 587 N.W.2d 240, 242 (Iowa 1998). The record must show that an accused was offered counsel but intelligently and understandingly rejected the offer. Id. anything less is not waiver. *Id.* A trial court has an absolute duty to indulge the accused in an on the record colloquy. *State v. Stephenson*, 608 N.W.2d 778, 783 (Iowa 2000). Harmless error analysis is not applicable to a Sixth Amendment right to self-representation question. *State v. Cooley*, 608 N.W.2d 9, 17 (Iowa 2000). Harmless error analysis cannot be utilized as a curative measure, regardless of whether prejudice results from the trial court's error. *Id.* at 18.

6. The defendant was never made aware by the court in OWCR023989 of the dangers and disadvantages of self-representation; therefore, because there was no valid waiver of counsel in Story County case number OWCR023989, that case may not be used for enhancement purposes in the instant case.

WHEREFORE the defendant requests that the court set a hearing on this motion, and that at the conclusion of said hearing, the court adjudicate as a matter of law that

Story County case number OWCR 023989 may not be used for enhancement purposes in Count I of Johnson County case number OWCR057355.

Dated this 22nd day of March, 2001.

/s/ Emily Hughes
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cc: County Attorney

EXHIBIT [A]

IOWA DISTRICT COURT FOR STORY COUNTY

STATE OF IOWA, Plaintiff, v. JON ROBERT LAKE, JASON EVANS, FELIPE TOVAR, JAMES THOMAS BLOME and JEREMIAH KEARNEY, Defendants.	:	Case Nos. SRCR023955, SRCR023980, OWCR023989, OWCR023988, OWC4R023956 TRANSCRIPT OF PROCEEDINGS (Filed Apr. 6, 2001)

The above-entitled matters came on for hearing before the Honorable Steven P. Van Marel commencing at 1:30 p.m. on Monday, November 18, 1996, at the District Associate Court, Story County Courthouse, Nevada, Iowa.

APPEARANCES

MARY RICHARDS, Story County Attorney, Story County Courthouse, Nevada, Iowa, appearing on behalf of the State.

Jon Robert Lake, Jason Evans, Felipe Tovar, James Thomas Blome and Jeremiah Kearney, appeared personally without counsel.

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[3] PROCEEDINGS

(Hearing commenced at 1:32 p.m., on Monday, November 18, 1998, with the Court, counsel, and defendants present in the courtroom)

THE COURT: We are on the record now in the state of Iowa versus Jon Lake, Case No. 23955. This is the time and place set for arraignment on a trial information charging the defendant with driving under suspension. Mr. Lake appears solely without counsel. Mr. Lake, I see that you are appearing here today without having an attorney present and you did not apply for a court appointed attorney. Did you want to represent yourself at today's hearing?

DEFENDANT LAKE: Yes.

THE COURT: Mr. Lake, have you received your information and the minutes of testimony?

DEFENDANT LAKE: Yes, I have.

THE COURT: And are you charged in your true correct name?

DEFENDANT LAKE: Yes.

THE COURT: And did you want me to read that information to you or did you want to waive the reading?

DEFENDANT LAKE: I will waive it.

THE COURT: And how did you wish to plead?

DEFENDANT LAKE: Guilty.

THE COURT: All right. I will get back to you [4] in just a moment, Mr. Lake.

We are also on the record in the State of Iowa versus Jason Evans, Case No. 23980. This is the time and place set for arraignment on a trial information charging the defendant with possession of marijuana. Mr. Evans, I note that you appear without having an attorney present and you waived application for an appointed attorney. Did you want to represent yourself at today's hearing?

DEFENDANT EVANS: Yes, sir.

THE COURT: Have you received your trial information and the minutes of testimony?

DEFENDANT EVANS: Yes, sir, I have.

THE COURT: And are you charged in your true and correct name?

DEFENDANT EVANS: Yes.

THE COURT: And did you want me to read that trial information to you or did you want to waive the reading?

DEFENDANT EVANS: Waive the reading.

THE COURT: And how did you wish to plead?

DEFENDANT EVANS: Guilty.

THE COURT: I will get back to you in just a moment.

We are on the record in the State of Iowa versus Felipe Tovar, Case No. 23989. This is the time and place set for arraignment on a trial information charging the defendant [5] with operating while intoxicated. Mr. Tovar appears without counsel and I see, Mr. Tovar, that you

waived application for a court appointed attorney. Did you want to represent yourself at today's hearing?

DEFENDANT TOVAR: Yes, sir.

THE COURT: And are you charged in your true and correct name?

DEFENDANT TOVAR: Yes, sir.

THE COURT: And did you want me to read that information to you or did you want to waive the reading?

DEFENDANT TOVAR: Waive the reading.

THE COURT: And how did you wish to plead?

DEFENDANT TOVAR: Guilty.

THE COURT: I will get back to you in just a moment.

We are on the record in the State of Iowa versus James Blome, Case No. 23988. This is the time and place set for arraignment on a trial information charging the defendant with operating while intoxicated. Mr. Blome, I note that you appear here today without having an attorney and you waived application for a court appointed attorney. Did you want to represent yourself at today's hearing?

DEFENDANT BLOME: Yes, sir.

THE COURT: Have your received your trial information and the minutes of testimony?

[6] DEFENDANT BLOME: Yes, sir.

THE COURT: Are you charged in your true and correct name?

DEFENDANT BLOME: Yes.

THE COURT: And did you want me to read the information to you or did you want to waive the reading?

DEFENDANT BLOME: Waive it.

THE COURT: How do you wish to plead?

DEFENDANT BLOME: Guilty.

THE COURT: I will get back to you in just a moment.

Then we are on the record in the State of Iowa versus Jeremiah Kearney, Case No. 23956. This is the time and place set for arraignment on a trial information charging the defendant with operating while intoxicated and possession of marijuana. Mr. Kearney, you appear here without counsel and I see you did not apply for a court appointed attorney. Did you want to represent yourself?

DEFENDANT KEARNEY: Yes.

THE COURT: And have you received your trial information and the minutes of testimony?

DEFENDANT KEARNEY: Yes.

THE COURT: Are you charged in your true and correct name?

DEFENDANT KEARNEY: Yes.

[7] THE COURT: And did you want me to read the information to you or did you want to waive the reading?

DEFENDANT KEARNEY: I want to waive it.

THE COURT: How did you wish to plead?

DEFENDANT KEARNEY: Guilty.

THE COURT: Gentlemen, it would be my suggestion that I do your five guilty pleas at the same time. That just saves me from having to do five basically identical hearings, one right after another. If I do your hearings at the same time, I would, of course, be making independent determinations about whether or not to accept your guilty pleas and independent determinations about what your sentences should be.

Mr. Lake, do you have any objection if we proceed in that fashion?

DEFENDANT LAKE: No, sir.

THE COURT: Mr. Evans, do you?

DEFENDANT EVANS: No.

THE COURT: Mr. Tovar?

DEFENDANT TOVAR: No, sir.

THE COURT: Mr. Blome?

DEFENDANT BLOME: No, sir.

THE COURT: Mr. Kearney?

DEFENDANT KEARNEY: No, sir.

THE COURT: Mr. Lake, how old are you?

[8] DEFENDANT LAKE: I am twenty-nine.

THE COURT: And what's the extent of your education?

DEFENDANT LAKE: I graduated high school.

THE COURT: So you obviously read and write the English language?

DEFENDANT LAKE: Yes, sir.

THE COURT: Are you currently under the influence of any kind of a drug or alcoholic beverage?

DEFENDANT LAKE: No.

THE COURT: Mr. Evans, your age?

DEFENDANT EVANS: Eighteen.

THE COURT: And your education?

DEFENDANT EVANS: G.E.D.

THE COURT: So you, of course, read and write?

DEFENDANT EVANS: Yes.

THE COURT: And are you currently under any kind of influence of a drug or alcoholic beverage?

DEFENDANT EVANS: No, sir.

THE COURT: Mr. Tovar, your age?

DEFENDANT TOVAR: Twenty-one.

THE COURT: Your education?

DEFENDANT TOVAR: Currently in college.

THE COURT: So you, of course, read and write the English language?

[9] DEFENDANT TOVAR: Yes.

THE COURT: Are you under the influence of any kind of a drug or alcoholic beverage?

DEFENDANT TOVAR: No, sir.

THE COURT: Mr. Blome, your age?

DEFENDANT BLOME: Twenty-four.

THE COURT; And your education?

DEFENDANT BLOME: Associates degree.

THE COURT: So you, of course, read and write?

DEFENDANT BLOME. Yes.

THE COURT: And are you under the influence of any kind of a drug or alcoholic beverage?

DEFENDANT BLOME: No, I am not.

THE COURT: Mr. Kearney, your age?

DEFENDANT KEARNEY: Twenty-one.

THE COURT: And your education?

DEFENDANT KEARNEY: Eleventh.

THE COURT: So you, of course, read and write?

DEFENDANT KEARNEY: Yes.

THE COURT: And are you under the influence of a drug or alcoholic beverage?

DEFENDANT KEARNEY: No.

THE COURT: Mr. Lake, has anyone promised you anything or threatened you in any way in order to convince you to enter this plea of guilty?

[10] DEFENDANT LAKE: No.

THE COURT: Have they you, Mr. Evans?

DEFENDANT EVANS: No.

THE COURT: Mr. Tovar?

DEFENDANT TOVAR: No, sir.

THE COURT: Mr. Blome?

DEFENDANT BLOME: Nope.

THE COURT: Mr. Kearney?

DEFENDANT KEARNEY: No.

THE COURT: Gentlemen, before I can accept your pleas of guilty, I need to take some time this afternoon and explain to you what your rights are, make sure you understand those rights, and make sure you understand what rights you will be giving up by pleading guilty. If at any time during these proceedings you do not understand something, please feel free to interrupt me and tell me that and I will be happy to explain to you what it is you did not understand. Also, if at any time during these proceedings you change your mind and you decide you no longer want to plead guilty, just tell me that, I will stop the proceedings in your case and anything that you might have said up to that point in time could not be used against you at your trial.

THE COURT: Mr. Lake, are you currently on parole or probation?

DEFENDANT LAKE: No, sir.

THE COURT: Are you Mr. Evans?

[11] DEFENDANT EVANS: No, sir.

THE COURT: Mr. Tovar?

DEFENDANT TOVAR: No.

THE COURT: Mr. Blome?

DEFENDANT BLOME: No, sir.

THE COURT: Mr. Kearney?

DEFENDANT KEARNEY: No.

THE COURT: Al [sic] right. Gentlemen, if you continue with this desire to plead guilty, there are certain rights that each one of you will be giving up and I now will explain those rights to you. First of all, if you enter a plea of not guilty, you would be entitled to a speedy and a public trial by jury. But, if you plead guilty, you give up your right to have a trial of any kind on your charge.

Do you understand that, Mr. Lake?

DEFENDANT LAKE: Yes, sir.

THE COURT: Mr. Evans?

DEFENDANT EVANS: Yes, sir.

THE COURT: Mr. Tovar?

DEFENDANT TOVAR: Yes, sir.

THE COURT: Mr. Blome?

DEFENDANT BLOME: Yes, sir.

THE COURT: Mr. Kearney?

DEFENDANT KEARNEY: Yes, sir.

THE COURT: If you would enter a plea of not [12] guilty, not only would you have the right to a trial, you would have a right to be represented by an attorney at that trial, including a court appointed attorney. That attorney could help you select a jury, question and cross-examine the State's witnesses, present evidence, if any, in your behalf, and make arguments to the judge and jury on your behalf. But, if you plead guilty, not only do you give up your right to a trial, you give up your right to be represented by an attorney at that trial.

Do you understand that, Mr. Lake?

DEFENDANT LAKE: Yes, sir.

THE COURT: Mr. Evans?

DEFENDANT EVANS: Yes, sir.

THE COURT: Mr. Tovar?

DEFENDANT TOVAR: Yes, sir.

THE COURT: Mr. Blome?

DEFENDANT BLOME: Yes, sir.

THE COURT: Mr. Kearney?

DEFENDANT KEARNEY: Yes, sir.

THE COURT: If you enter a plea of not guilty, you would have a privilege against self-incrimination, which means you could not be forced to testify at your trial. And, if you elected not to testify, that election could not be used against you in any way. The county attorney's office would not be allowed to make any comments to the jury about your decision [13] not to testify. But, if you plead guilty, you give up that right to remain silent and

you will be required to admit your guilt here in the courtroom today.

Do you understand that, Mr. Lake?

DEFENDANT LAKE: Yes, sir.

THE COURT: Mr. Evans?

DEFENDANT EVANS: Yes.

THE COURT: Mr. Tovar?

DEFENDANT TOVAR: Yes, sir.

THE COURT: Mr. Blome?

DEFENDANT BLOME: Yes, sir.

THE COURT: And Mr. Kearney?

DEFENDANT KEARNEY: Yes.

THE COURT: If you enter a plea of not guilty, you would be presumed innocent until the State, if ever, proved you guilty beyond a reasonable doubt. But, if you plead guilty, you give up that presumption that you are innocent and by the admissions that you make in court today, you will be proving your guilt beyond a reasonable doubt.

Do you understand that, Mr. Lake?

DEFENDANT LAKE: Yes, sir.

THE COURT: Mr. Evans?

DEFENDANT EVANS: Yes, sir.

THE COURT: Mr. Tovar?

DEFENDANT TOVAR: Yes, sir.

[14] THE COURT: Mr. Blome?

DEFENDANT BLOME: Yes, sir.

THE COURT: Mr. Kearney?

DEFENDANT KEARNEY: Yes, sir.

THE COURT: If you enter a plea of not guilty, the witnesses whose names appear in the minutes of testimony would be required to appear and testify in front of you and your attorney at trial and be subject to cross-examination by your attorney. But, if you plead guilty, those witnesses will never appear in court to testify in your case.

Do you understand that, Mr. Lake?

DEFENDANT LAKE: Yes, sir.

THE COURT: Mr. Evans?

DEFENDANT EVANS: Yes, sir.

THE COURT: Mr. Tovar?

DEFENDANT TOVAR: Yes, sir.

THE COURT: Mr. Blome?

DEFENDANT BLOME: Yes, sir.

THE COURT: Mr. Kearney?

DEFENDANT KEARNEY: Yes, sir.

THE COURT: If you enter a plea of not guilty, you would have a right to subpoena witnesses, and that

means that you could force witnesses to appear and testify for you. But, if you plead guilty, you give up that right.

Do you understand that, Mr. Lake?

[15] DEFENDANT LAKE: Yes, sir.

THE COURT: Mr. Evans?

DEFENDANT EVANS: Yes, sir.

THE COURT: Mr. Tovar?

DEFENDANT TOVAR: Yes, sir.

THE COURT: Mr. Blome?

DEFENDANT BLOME: Yes, sir.

THE COURT: Mr. Kearney?

DEFENDANT KEARNEY: Yes.

THE COURT: Gentlemen, those are the rights that you will be giving up if you plead guilty. Knowing that, did you still wish to plead guilty?

Mr. Lake?

DEFENDANT LAKE: Yes, sir.

THE COURT: Mr. Evans?

DEFENDANT EVANS: Yes, sir.

THE COURT: Mr. Tovar?

DEFENDANT TOVAR: Yes, sir.

THE COURT: Mr. Blome?

DEFENDANT BLOME: Yes, sir.

THE COURT: Mr. Kearney?

DEFENDANT KEARNEY: Yes, sir.

THE COURT: Mr. Lake, you have been charged with driving under suspension. That charge carries a maximum penalty of up to a year in jail and up to a $1500.00 fine and a [16] mandatory minimum fine of $250.00. Do you understand that?

DEFENDANT LAKE: Yes, sir.

THE COURT: Mr. Evans, you have been charged with possession of marijuana. That charge carries a maximum penalty of up to six months in jail and up to a $1,000.00 fine and a mandatory minimum fine of $100.00 Do you understand that?

DEFENDANT EVANS: Yes, sir.

THE COURT: Mr. Tovar and Mr. Blome, you have been charged with operating while intoxicated. That charge carries a maximum penalty of up to a year in jail and up to a $1,000.00 fine and the mandatory minimum fine of two days in jail and a $500.00 fine. Do you understand that, Mr. Tovar?

DEFENDANT TOVAR: Yes, sir.

THE COURT: Mr. Blome?

DEFENDANT BLOME: Yes, sir.

THE COURT: Mr. Kearney, you have been charged with operating while intoxicated and possession of a controlled substance. Those – So the operating while intoxicated charge carries a maximum penalty of up to a year in jail and up to a $1,000.00 fine and a mandatory

minimum penalty of two days in jail and a $500.00 fine. Do you understand that?

DEFENDANT KEARNEY: Yes, sir.

THE COURT: The charge of possession of a controlled substance carries a maximum penalty of up to six [17] months in jail and up to a $1,000.00 fine and a mandatory minimum fine of $100.00. Do you understand that?

DEFENDANT KEARNEY: Yes, sir.

THE COURT: Gentlemen, I want you to understand that no matter what you ask for at the time of sentence and no matter what the State recommends, your sentencing is up to me and I can impose any penalty from the mandatory minimum on up to the maximum sentence.

Do you understand that, Mr. Lake?

DEFENDANT LAKE: Yes, sir.

THE COURT: Mr. Evans?

DEFENDANT EVANS: Yes, sir.

THE COURT: Mr. Blome?

DEFENDANT BLOME: Yes, sir.

THE COURT: Mr. Tovar?

DEFENDANT TOVAR: Yes, sir.

THE COURT: And Mr. Kearney?

DEFENDANT KEARNEY: Yes, sir.

THE COURT: Before I can accept your pleas of guilty, I need to be satisfied that you are in fact guilty of

the offense you are pleading guilty to. And, I do that by satisfying myself that you have committed the elements of the offense and I need to spend a little bit of time now with each of you individually and explain to you what the elements are and determine whether or not you committed those elements.

[18] Mr. Lake, the charge of driving under suspension just has two elements. The first element in your case would be that on October 24 of this year you operated a motor vehicle on a public street or highway in Iowa. The second element of the offense is that when you were driving your driving privileges were under suspension. Now, Mr. Lake, on October 24th of 1996 did you operate a motor vehicle on a public street or highway in the State of Iowa?

DEFENDANT LAKE: Yes, sir.

THE COURT: It looks like you were driving on Highway 69 in Huxley?

DEFENDANT LAKE: Yes, sir.

THE COURT: And at the time you were driving, were your privileges to drive under suspension?

DEFENDANT LAKE: Yes, they were.

THE COURT: Mr. Evans, you have been charged with possession of a controlled substance, which has three elements. In your case, the first element would be that on October 29, 1996, you had in your possession marijuana. The second element of the offense would be that you knew you had marijuana. And, the third element of the offense is that you knew what you had was

marijuana. Mr. Evans, on October 29th of this year, did you have in your possession marijuana?

DEFENDANT EVANS: Yes, sir, I did.

THE COURT: Did you know that you had it with [19] you?

DEFENDANT EVANS: Yes, sir.

THE COURT: And did you know it was marijuana?

DEFENDANT EVANS: Yes, sir.

THE COURT: Mr. Tovar, Mr. Blome and Mr. Kearney, all three of you have been charged with operating while intoxicated. That charge just has two elements to the offense. The first element is that on the date listed on the trial information you were operating a motor vehicle in the State of Iowa. The second element of the offense is that when you did so, you were intoxicated. Now, under the law of the State of Iowa, there are two definitions of intoxication and you may fit one or both of those definitions. One way to be intoxicated is to have had a blood or breath alcohol concentration of .10 percent or more in your body at the time you were driving. The other way to be intoxicated is to be under the influence of alcohol, which means that the consumption of alcohol has affected your judgment on your reasoning or your faculties or it has caused you to lose control in any manner or to any degree of the actions or motions of your body.

Mr. Tovar, on November 2nd of this year, did you operate a motor vehicle in the State of Iowa?

DEFENDANT TOVAR: Yes.

THE COURT: It looks like you were driving on Lincolnway in the City of Ames?

[20] DEFENDANT TOVAR: Yes, sir.

THE COURT: Before you got in your car and drove it that night, had you been consuming alcohol?

DEFENDANT TOVAR: Yes, sir.

THE COURT: The minutes of testimony here indicate that you took an intoxilyzer test that showed you had a blood alcohol level of .194. Do you have any disagreement with that test result?

DEFENDANT TOVAR: No, sir.

THE COURT: Did you feel the effects of the alcohol that night either when you were driving or perhaps when you took the field sobriety tests?

DEFENDANT TOVAR: No, sir.

THE COURT: You didn't – The alcohol had no impact on you at all?

DEFENDANT TOVAR: I didn't think so.

THE COURT: Okay. But you do agree with the result of the intoxilyzer test?

DEFENDANT TOVAR: Yes, sir.

THE COURT: Mr. Blome, On November 2nd of this year, did you operate a motor vehicle in the State of Iowa?

DEFENDANT BLOME: Yes, sir.

THE COURT: It looks like you were also driving on Lincolnway in the City of Ames?

DEFENDANT BLOME: Yes.

[21] THE COURT: Before you got in your car and drove it that night, had you been consuming alcohol?

DEFENDANT BLOME: Yes, sir.

THE COURT: And it looks like you took an intoxilyzer test that showed you had a blood alcohol level of .137. Do you have any disagreement with that test result?

DEFENDANT BLOME: No, I don't.

The COURT: Could you feel the effects of the alcohol?

DEFENDANT BLOME: Yes, sir.

THE COURT: And how did the alcohol affect you?

DEFENDANT BLOME: It gave me a buzz, I guess.

THE COURT: Did it effect your physically, impact on your balance or coordination?

DEFENDANT BLOME: No.

THE COURT: Think it affected your judgment or your reasoning?

DEFENDANT BLOME: No.

THE COURT: Okay. But you could feel the effects somewhat?

DEFENDANT BLOME: Yes.

THE COURT: Okay. And you don't have any disagreement with the breath test?

DEFENDANT BLOME: No, sir.

[22] THE COURT: Mr. Kearney, on October 26 of this year, did you operate a motor vehicle in the State of Iowa?

DEFENDANT KEARNEY: Yes, sir.

THE COURT: And it looks like you were in Story County on county road E57; is that right?

DEFENDANT KEARNEY: Yes, sir.

THE COURT: Had you been consuming alcohol before you drove that night?

DEFENDANT KEARNEY: Yes, sir.

THE COURT: And according to the minutes of testimony you took an intoxilyzer test that showed you had a blood alcohol level of .151. Do you have any disagreement with that test result?

DEFENDANT KEARNEY: No, sir.

THE COURT: Could you feel the effects of the alcohol?

DEFENDANT KEARNEY: Yes, sir.

THE COURT: How did the alcohol affect you?

DEFENDANT KEARNEY: I was drunk.

THE COURT: Pardon me?

DEFENDANT KEARNEY: I was drunk.

THE COURT: Could you feel the alcohol physically affect you?

DEFENDANT KEARNEY: Yes.

THE COURT: It had some impact on your [23] balance, coordination?

DEFENDANT KEARNEY: Right.

THE COURT: Is that yes?

DEFENDANT KEARNEY: Yes.

THE COURT: Then you have also been charged with possession of a controlled substance. So, Mr. Kearney, on that night, did you have in your possession marijuana?

DEFENDANT KEARNEY: Yes, sir.

THE COURT: Did you know that you had the marijuana with you?

DEFENDANT KEARNEY: Yes, sir.

THE COURT: And did you know it was marijuana?

DEFENDANT KEARNEY: Yes, sir.

THE COURT: Okay. Mr. Lake, for the last time, did you still wish to enter your plea of guilty?

DEFENDANT LAKE: Yes, sir.

THE COURT: Mr. Evans, did you?

DEFENDANT EVANS: Yes, sir.

THE COURT: Mr. Tovar, did you?

DEFENDANT TOVAR: Yes, sir.

THE COURT: Mr. Blome, did you?

DEFENDANT BLOME: Yes, sir.

THE COURT: Mr. Kearney, did you?

DEFENDANT KEARNEY: Yes, sir.

THE COURT: Ms. Richards do you know of any [24] legal cause why I should not accept the pleas of guilty?

MS. RICHARDS: No, Your Honor.

THE COURT: Mr. Lake, Mr. Evans, Mr. Tovar, Mr. Blome, Mr. Kearney, I find that each one of you has entered your plea of guilty – your pleas of guilty voluntarily, with a full understanding of your rights, with a full understanding of the consequences of your pleas. I find a factual basis for your pleas and I do accept each one of your pleas of guilty.

Now that I have accepted your guilty pleas, each one of you has another right that I want to tell you about. And, that is your right to file a motion in arrest of judgment. A motion in arrest of judgment is a motion that you must file if you want to challenge or attack the validity of your plea of guilty. If you think your plea of guilty is defective and that I should not have accepted it, or if you want to attempt to withdraw your plea of guilty for whatever reason, you have to do that by filing a motion in arrest of judgment. And, in order for that motion to be effective, you have to file it at least five days before you are sentenced. Now, each one of you has a right to wait at least fifteen

days from today before you are to be sentenced. If you want to, you may waive that additional fifteen day waiting period and you may proceed to sentencing today. If you proceed to sentencing today, you are giving up your right to file a motion in arrest of judgment because you simply would not have time to file that motion before I sentence [25] you. What that means is that you are then giving up forever your ability to challenge your guilty plea. You are stuck with your guilty plea forever if you are sentenced today. And, the only thing you could ever appeal after today would be the sentence. You could not appeal your guilty plea. Also, if you proceed to sentencing today and you have to serve some jail time, you do not have to report to jail immediately today. I will let you decide when you want to report. And, if you are given a fine, I will give you time to pay your fine.

And, Mr. Lake, did you want to do sentencing at a later date or today.

DEFENDANT LAKE: I would like to do it today.

THE COURT: Mr. Evans?

DEFENDANT EVANS: Today, please.

THE COURT: Mr. Tovar?

DEFENDANT TOVAR: At a later date.

THE COURT: Okay. Mr. Blome?

DEFENDANT BLOME: Later date.

THE COURT: Mr. Kearney?

DEFENDANT KEARNEY: Today.

THE COURT: Ms. Weuve, would you get the calendar and we will set sentencing. All right. Mr. Tovar, how about if we set your sentencing for December 9th at 9:00 o'clock?

DEFENDANT TOVAR: That's fine.

[26] THE COURT: And Mr. Blome, we will set your sentencing for December 9th at 9:15, right after Mr. Tovar's. Will that work out okay?

MR. BLOME: That's fine. We will get orders out setting sentencing for December 9th at 9:00 and 9:15, respectively, We will send you those orders in the mail. You are free to go.

* * *

(At which time Defendants Tovar and Blome were excused from the Courtroom and the following record was made.)

* * *

THE COURT: We will start sentencing then with Mr. Lake. Ms. Richards, is there any evidence by the State?

MR. RICHARDS: Yes, Your Honor. Your Honor, State's Exhibit 1 is a copy of the defendant's driving record. State's Exhibit 2 is a copy of the defendant's criminal record. I just wrote '95.

THE COURT: Mr. Lake, any objection to Exhibit 1 or 2?

DEFENDANT LAKE: No, sir.

THE COURT: Exhibits 1 and 2 are admitted. Mr. Lake, did you have any evidence that you wanted to submit?

DEFENDANT LAKE: No, sir.

THE COURT: Ms. Richards, is there a recommendation by the State?

[27] MS. RICHARDS: Your Honor, the defendant has had a number of charges of driving while suspended, denied, canceled or revoked. I see here that there are, one, two, three, four, five of them, and since November of 1992, and suspended for a variety of different reasons. Under the circumstances, I think it would be appropriate if the judge would impose a jail sentence, whatever sentence the judge finds appropriate.

THE COURT: Thank you. Mr. Lake, before I impose your sentence, you have a right to make a statement. If there is anything you want to tell me about yourself, about this offense, or any kind of a sentence that you want to ask for, this is your opportunity to do so.

DEFENDANT LAKE: Well, I am guilty of driving. There was no excuse. I drove to Caseys to get a pop. It was raining. I didn't walk. My wife generally drives me everywhere I go. She was asleep that evening with the baby, so she couldn't leave. I do have a bad driving record. But, I don't make it a habit to drive unless I absolutely have to. Like in the past, Caseys. That's all I got to say.

THE COURT: Well, Mr. Lake, as I impose your sentence here today, there are two things I hope the sentence will accomplish: your rehabilitation and protection for our community. To say you have a bad driving record, Mr. Lake, is to put things mildly. You have a

terrible driving record. At least five prior driving under suspensions. I see the last [28] time, back in '95, you got ten days in jail and still here you are on another charge of driving under suspension. Some day, Mr. Lake, you have to learn that when the State says you are under suspension, you can't drive, and it makes no difference how important you think you [sic] mission is, you cannot get in a car and drive unless – I don't know – unless it is a case of a life or death situation and that rarely occurs. It doesn't matter if you have to go to work or if you have to go do – run some errands. It just makes no difference, Mr. Lake. You cannot drive and if you do and if you get caught, there are going to be serious consequences. Mr. Lake, in this case I am going to once again impose a ten day jail sentence. The last time you got ten days in jail was about a year and a half ago. So, maybe if you get another ten days now you will finally learn that you cannot do this. And, Mr. Lake, there are people right now upstairs in this building spending a year in jail on driving under suspension charges because they kept doing it. The sentences kept getting more severe until finally they got a year. That's a huge waste of a year to sit in jail because you couldn't stay out of a car and that's where you are headed, Mr. Lake, unless you make a decision to stop driving.

So, Mr. Lake, it is the order of this Court that you are adjudged guilty of driving under suspension, in violation of Section 321.210A of the Iowa Code.

You are sentenced to serve ten days in the Story [29] County Jail with credit for any time served. You are ordered to pay a $250.00 fine, a 30% surcharge and costs. You shall contact the Story County Sheriff's Office no later than November 30, 1996, in order to make arrangements to serve your jail sentence, which shall be served by

January 15, 1997. You are given ninety days in which to pay the fine, surcharge and costs.

Judgment having been imposed here, Mr. Lake, you do have a right to appeal the sentence. If you want to appeal, you must file a notice of appeal with the Clerk within thirty days. If you cannot afford the costs of appeal, those will be provided for you at the public expense, including the services of an attorney and the preparation of a transcript. Bond on appeal will be $650.00

Mr. Lake, what you need to do is by the end of the month is go up and talk to the sheriff's office and come up with a time when you can serve your ten days.

DEFENDANT LAKE: Do I need to go up there personally?

THE COURT: You can call them up personally. You have to serve your ten days all at once. You can't break it up on the weekends. It will be a straight ten day sentence. So, you need to make those arrangements with the sheriff's office. You need to go up to the Clerk's office and find out how much you owe and you got ninety days to get that paid. Do you have any questions about your sentence?

[30] DEFENDANT LAKE: No, sir.

THE COURT: Okay. You are free to go.

* * *

(At which time Defendant Lake was excused from the Courtroom and the following record was made.)

* * *

THE COURT: Ms. Richards, any evidence for Mr. Evans?

MS. RICHARDS: No, Your Honor. The State has sent for both criminal and driving record with regard to Mr. Evans and neither has been received.

THE COURT: Okay. Mr. Evans, did you have any evidence to submit?

DEFENDANT EVANS: No.

THE COURT: Recommendation by the State.

MS. RICHARDS: Your Honor, in this instance, I would recommend the mandatory minimum fine.

THE COURT: Mr. Evans, did you wish to make a statement before I impose your sentence?

DEFENDANT EVANS: No, sir.

THE COURT: Mr. Evans, you apparently don't have a prior criminal record and given your age, I think that imposition of a $250.00 fine is appropriate. I think that should be enough of a penalty to make you understand that when the State of Iowa says you cannot possess marijuana, you cannot [31] possess marijuana. And if you do and you get caught, there are going to be serious consequences. Mr. Evans, you might think that possession of marijuana is no big deal. It is an offense that doesn't hurt anyone. First of all, those things aren't true. And, even if they were true, it doesn't make any difference. The point is that the State legislature has determined possession of marijuana is unlawful. And it is your responsibility to follow the law. And if you don't, there can be consequences. And, I think that this should be enough of a

penalty and enough of a consequence to make you understand you need to do a better job exercising your responsibility.

So, Mr. Evans, it is the order of this Court that you are adjudged guilty of possession of marijuana, in violation of Section 124.401(3) of the Iowa Code.

You are sentenced to pay a $250,00 fine, a 30% surcharge and costs.

Judgment having been imposed, you do have a right to appeal. You must file a written notice of appeal with the Clerk within thirty days. And if you cannot afford the costs of appeal, those will be provided for you at the public expense, including the services of an attorney and the preparation of a transcript. Bond on appeal will be $650.00.

Mr. Evans, with the fine, 30% surcharge and costs, you will owe about $400.00. How much time do you think you will need to get that paid?

[32] DEFENDANT EVANS: A while. I don't – How much time can I have?

THE COURT: Well, 90 days, 120 days.

DEFENDANT EVANS: Probably 120 days.

THE COURT: I will give you 120 days to pay this. You should go up to the Clerk's office before you leave today and the Clerk will tell you exactly how much you owe and then they will tell you how you can send in your payments.

DEFENDANT EVANS: All right.

THE COURT: You are free to go.

* * *

(At which time Defendant Evans was excused from the Courtroom and the following record was made.)

* * *

THE COURT: Ms. Richards, evidence for Mr. Kearney.

MS. RICHARDS: State's Exhibit 1 is a copy of Mr. Kearney's driving record, Your Honor.

THE COURT: Mr. Kearney, any objection?

DEFENDANT KEARNEY: No.

THE COURT: Exhibit 1 is admitted.

MS. RICHARDS: Your Honor, there is no criminal record available.

THE COURT: Mr. Kearney, did you have any evidence to submit?

[33] DEFENDANT KEARNEY: No, sir.

THE COURT: Ms. Richards, the State's recommendation.

MS. RICHARDS: Your Honor, Mr. Kearney has a minimal driving record prior to this time. The last time anything appears on his record was a speeding ticket, an accident involvement in 1992. And that is the only thing that appears on his record. He has no criminal record. Under the circumstances, I would recommend the mandatory minimum two days in jail, a $500.00 fine, plus

surcharge on the O.W.I., and the mandatory minimum fine for the possession of marijuana.

THE COURT: Mr. Kearney, did you wish to make a statement before I impose your sentence?

DEFENDANT KEARNEY: No, sir.

THE COURT: Mr. Kearney, as I impose your sentence or sentences, there are two things I hope they will accomplish: your rehabilitation and protection for our community from further offenses from you. And, I think generally what they need to do is to impress upon you how important it is that you exercise your responsibilities as a member of our community. Mr. Kearney, when you operated your vehicle, when you were intoxicated, you placed not only yourself, but more importantly, you placed innocent members of our community at risk of death or serous injury. You could have easily been involved in a serious accident and killed [34] somebody's child or destroyed a family. And, you just do not have the right to create those kinds of risks. On the possession charge, I can make you understand that it is your responsibility to follow the laws of the State of Iowa. And, if you don't, there can be serious consequences. Mr. Kearney, I will impose the mandatory minimum sentence, which on the O.W.I. charge is two days in jail and a $500.00 fine. And, on the possession charge, I will impose a $250.00 fine. I think those should be a severe enough penalty to make you understand that you do have to do a better job exercising your responsibilities.

So, Mr. Kearney, you are adjudged guilty of operating while intoxicated, in violation of Section 321J.2 of the Iowa Code.

You are sentenced to serve two days in the Story County Jail with credit for time served. And, you are ordered to pay a $500.00 fine, a 30% surcharge and costs. You shall contact the Story County Sheriff's Office no later than November 30, 1996, in order to make arrangements to serve your jail sentence, and you shall have your sentence completed by January 15, 1997.

You are also adjudged guilty of possession of a controlled substance in violation of Section 124.401(3) of the Iowa Code.

You are ordered to pay a $250.00 fine, a 30% surcharge and costs. You shall pay the fines, surcharges and costs within [35] the next 180 days.

Judgment having been imposed, Mr. Kearney, you do have a right to appeal both sentences. If you want to appeal, you must file a written notice of appeal with the Clerk within thirty days and if you cannot afford the costs of appeal, those will be provided for you at the public expense including the services of an attorney and the preparation of a transcript. Bond on appeal will be $650.00 on each charge.

Mr. Kearney, you need to check with the sheriff's office before the end of the month and make arrangements to come in and serve your two days. And then you need to check with the Clerk's office and the Clerk will tell you how much you owe on these two matters and they will – I have given you six months to get those matters paid. Okay. Do you have any questions about your sentences?

DEFENDANT KEARNEY: No, sir.

THE COURT: If you check with the court attendant on your way out, she can tell you where to find

the sheriff's office and the clerk's office. Okay. You are free to go.

* * *

(At which time, Defendant Kearney was excused from the Courtroom and the following record was made.)

* * *

THE COURT: Mr. Blume, you changed your mind [36] and you want to do sentencing today?

DEFENDANT BLOME: Yes.

THE COURT: Okay. We can go on the record. Go ahead and have a seat.

We are on the record in the State of Iowa versus James Blome. Mr. Blome, it is my understanding you have changed your mind and you want to proceed to sentencing?

DEFENDANT BLOME: Yes, sir.

THE COURT: Okay. Has anybody promises [sic] you anything or threatened you in any way in order to convince you to proceed to sentencing today?

DEFENDANT BLOME: No.

THE COURT: Ms. Richards, is there any evidence by the State?

MS. RICHARDS: Your Honor, Mr. Blome appears to have neither any driving record nor any criminal record in the State of Iowa. I would note, however – let's see – that Mr. Blome's home is in Blooming Prairie, Minnesota, and I am not sure we would have had time to receive any records from there as of this date.

THE COURT: Mr. Blome, did you have any evidence to submit?

DEFENDANT BLOME: No.

THE COURT: Ms. Richards, the recommendation by the State.

[37] MS. RICHARDS: Your Honor, given the fact that I know absolutely nothing about this man's background nor his prior record, I feel that the only appropriate thing that can be done here is to recommend the mandatory minimum of two easy [sic] in jail and a $500.00 fine.

THE COURT: Thank you. Mr. Blome, before I impose your sentence, did you wish to make a statement?

DEFENDANT BLOME: Yes. I know I did wrong and I understand that and because of that I have quit drinking. That's it, I guess.

THE COURT: Mr. Blome, you have heard me sentence several people here today and again, I hope the sentence does two things: it rehabilitates you and protects our community from further offenses from you. I am assuming, Mr. Blome, you have no prior record.

DEFENDANT BLOME: Right.

THE COURT: I think what the sentence needs to do in a general sense is to make you understand how important it is that you exercise your responsibilities as a member of your community. Because if you don't, as you did not in this instance, you end up placing not only yourself, but innocent members of our community at risk of death or serious injury. And you just do not have the right to create that kind of risk. I am sure if some drunk

driver killed a member of your family or close friend of yours, you would be devastated. That's exactly [38] the situation you created when you drove when you were intoxicated. Nobody really goes out intending to drink to the point of intoxication, gets in their car and gets arrested or gets in an accident and kills somebody. It is done unintentionally. But it doesn't make any difference. People still get killed and injured every day by drunk drivers. Mr. Blome, I think that imposition of the mandatory minimum penalty is appropriate. I don't see any reason here to impose anything more severe than that. I think by the time you serve your sentence, you will understand how serious the charge is and you will make a decision not ever to let this happen again.

So, Mr. Blome, it is the order of this Court that judgment is imposed and you are adjudged guilty of operating while intoxicated, in violation of Section 321J.2 of the Iowa Code.

You are sentenced to serve two days in the Story County Jail with credit for time served. You are ordered to pay a $500.00 fine, a 30% surcharge and costs.

Judgment having been imposed, you do have a right to appeal the sentence. If you want to appeal, you must file a written notice of appeal with the Clerk within thirty days. If you cannot afford the costs of appeal, those will be provided for you at the public expense, including the services of an attorney and the preparation of a transcript. Bond on appeal is $650.00.

[39] Mr. Blome, I see you posted cash bond here. If you want to, you can use the – part of your bond to pay what you owe and then get the rest back.

DEFENDANT BLOME: That would be fine.

THE COURT: Okay. It is the further order of this Court that the previously posted bond is condemned for payment of the fine, surcharge and costs with the excess to be exonerated to the person posting the bond. Mr. Blome, it is – I will also order you to contact our county sheriff's office by November 30th to make arrangements to serve your sentence, which shall be served by January 15, 1997. I understand you want to serve your time in Minnesota?

DEFENDANT BLOME: Right.

THE COURT: And, I don't care if you do that. But, it will be your responsibility to talk to our sheriff here and the sheriff of the county where you want to serve, so that you can make those arrangements and they can make those arrangements because that sheriff will have to contact our sheriff to make sure you actually show up and serve your two days and I think generally you have to pay – pay that other county to serve time in their jail. So, as long as you can work out the arrangements, I don't care. You just have to have it done by January 15th. And, I would suggest you still go talk to our sheriff's office before you leave today to find out what you need to do to get that accomplished.

[40] DEFENDANT BLOME: Okay.

THE COURT: And then you might want to check up with the Clerk's office and they can tell you when they will be sending you the rest of your bond money and how much you owe all together.

DEFENDANT BLOME: Okay. Thank you.

THE COURT: You are free to go.

* * *

COURT REPORTER'S NOTE: At which time, 2:33 p.m., nothing further was had in this matter on this date.)

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[41] CERTIFICATE OF JUDGE AND
COURT REPORTER
IOWA DISTRICT COURT FOR STORY COUNTY

November 18, 1996

STATE OF IOWA, Plaintiff, v. JON ROBERT LAKE, JASON EVANS, FELIPE TOVART [sic], JAMES BLOME, And JEREMIAH KEARNEY, Defendants.	:	No. SRCR023955, SRCR023980 OWCR023989, OWCR023988, OWCR023956

We, the undersigned District Judge and Official Court Reporter in and for the Second Judicial District of Iowa, do respectively certify that we acted as such District Judge and Official Reporter in the trial of the above-entitled cause. That the annexed and foregoing shorthand report is a true, full, and complete record of the proceeding had and the evidence taken in said cause, and contains, with the exhibits, records, and

documentary evidence therein referred to and identified, all of the evidence offered, given or introduced in said cause upon the trial or hearing thereof, all objections and motions hereto, or any part thereof, all rulings of the Court upon the same, and all exceptions to such rulings, and contains a full, true, and complete report of all proceedings had and that are required to be kept, all as provided by Sections 624.9, 624.10, and 624.11 of the Code of Iowa.

Dated this 18th day of November 1996.

/s/ Steve Van Marel
Judge of the 2d Judicial District

/s/ Karen K. Hill, CSR, RPR
Official Court Reporter

[42] CERTIFICATE

I, Karen K. Hill, an Official and Certified Shorthand Reporter for the State of Iowa, do hereby certify that I was present during the above-entitled matter and took down in shorthand the testimony and other proceedings had, that my shorthand notes were subsequently extended into typewriting, and that the foregoing pages constitute a complete transcript of the proceedings had.

Dated this 29th day of March, 2001.

/s/ Karen K. Hill
Karen K. Hill, CSR, RPR

Transcript ordered by Johnson County Attorney's Office

Transcript mailed: March 29, 2001

EXHIBIT [B]

IOWA DISTRICT COURT FOR STORY COUNTY

STATE OF IOWA, Plaintiff,	:	Case No. SRCR024089, OWCR023989
v. FELIPE EDGARDO TOVAR, Defendant.	:	TRANSCRIPT OF PLEA AND SENTENCING (Filed Apr. 6, 2001)

The above-entitled matter came on for hearing before the Honorable Steven P. Van Marel commencing at 11:45 a.m. on Wednesday, December 30, 1996, at the District Associate Court, Story County Courthouse, Nevada, Iowa.

APPEARANCES

DANIEL GONNERMAN, Assistant Story County Attorney, Story County Courthouse, Nevada, Iowa, appearing on behalf of the State.

FELIPE EDGARDO TOVAR, pro se.

[2] PROCEEDINGS

(Hearing commenced at 11:45 a.m., on Wednesday, [December 30, 1996,] with the Court, counsel, and defendant present in the courtroom.)

THE COURT: We are on the record today in the State of Iowa versus Felipe Tovar, Case 23989. This is the time and place set for sentencing on a charge of operating while intoxicated. And also, Case No. 24089, this is the time and place set for arraignment on a charge of driving

under suspension. We will take up that arraignment first. Mr. Tovar, I note that you are appearing here today without having an attorney present and you waived application for a court appointed attorney. I am sorry. You applied, but it was denied due to the fact you are dependent upon your parents. Mr. Tovar, did you want to represent yourself at today's hearing or did you want to take some time to hire an attorney to represent you?

THE DEFENDANT: No, I will represent myself.

THE COURT: Mr. Tovar, has anyone promised you anything or threatened you in any way in order to convince you to proceed here today without having an attorney present?

THE DEFENDANT: No, sir.

THE COURT: Mr. Tovar, have you received a copy of the trial information and the minutes of testimony?

THE DEFENDANT: Yes, sir.

THE COURT: And are you charged in your true [3] and correct name?

THE DEFENDANT: Yes, sir.

THE COURT: And did you want me to read that trial information to you or did you want to waive the reading?

THE DEFENDANT: I will waive it.

THE COURT: And how did you wish to plead?

THE DEFENDANT: Guilty.

THE COURT: Mr. Tovar, before I can accept your plea of guilty, I need to take some time here and advise you of your rights, determine if you are entering your plea voluntarily and determine if a factual basis exists for your plea. If at any time during these proceedings you change your mind and you decide you no longer want to plead guilty, tell me that, I will stop the proceedings, and anything that you might have said up to that point in time could not be used against you at your trial. Also, if at any time during these proceedings you change your mind or you do not understand something, please tell me that, and I will explain to you what it is you did not understand. How old are you, Mr. Tovar?

THE DEFENDANT: Twenty-one.

THE COURT: And what's the extent of your education?

THE DEFENDANT: I am currently enrolled in the university.

THE COURT: So you obviously read and write [4] the English language?

THE DEFENDANT: Yes.

THE COURT: Are you currently under the influence of any kind of a drug or alcoholic beverage?

THE DEFENDANT: No, sir.

THE COURT: Are you currently on parole or probation?

THE DEFENDANT: No, sir.

THE COURT: Has anyone promised you anything or threatened you in any way in order to convince you to enter this plea of guilty?

THE DEFENDANT: No, sir.

THE COURT: Mr. Tovar, if you continue with this desire to plead guilty, there are certain rights that you will be giving up and I now want to explain those rights to you. First of all, if you enter a plea of not guilty, you would be entitled to a speedy and a public trial by jury. But, if you plead guilty, you give up your right to have a trial of any kind on that. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: At that trial, you would have a right to be represented by an attorney, including a court appointed attorney. However, if you plead guilty, not only do you give up your right to a trial, you give up your right to be represented by an attorney at that trial. Do you understand [5] that?

THE DEFENDANT: Yes, sir.

THE COURT: If you enter a plea of not guilty, you would have a privilege against self-incrimination, which means that you could not be forced to testify at your trial, and if you elected not to testify, that election could not be used against you in any way. However, if you plead guilty, you give up that privilege against self-incrimination, and you will be required to admit your guilt here in the courtroom today. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: If you enter a plea of not guilty, you would be presumed innocent until the State, if ever, proved you guilty beyond a reasonable doubt. But if you plead guilty, you give up that presumption that you are innocent, and by the admissions that you make in court today, you will be proving your guilt beyond a reasonable doubt. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: If you enter a plea of not guilty, you would have a right to subpoena witnesses. That means you could force witnesses to appear and testify. But, if you plead guilty, you give up that right. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: If you would enter a plea of not guilty, the witnesses whose names are listed on the minutes of [6] testimony would be required to appear and testify in front of you and your attorney and be subject to cross-examination by your attorney. But, if you plead guilty, you give up that right, and none of those witnesses will ever appear in court and testify in your case. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Mr. Tovar, knowing those to be the rights that you must give up if you plead guilty, did you still wish to plead guilty?

THE DEFENDANT: Yes, sir.

THE COURT: The charge of driving under suspension carries a maximum penalty of up to a year in

jail and up to a $1,500.00 fine, and it carries a mandatory minimum fine of $250.00 fine. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand at sentencing I can impose the maximum penalty if I think it is appropriate?

THE DEFENDANT: Yes.

THE COURT: Mr. Tovar, before I can accept your guilty plea, I need to be satisfied that you are in fact guilty of the offense charged. I do that by satisfying myself that you have committed the elements of the crime. And in this case there are two elements. The first element would be that on or about November 18th, 1996, you operated a motor vehicle in the – on a public highway in the State of Iowa. The second [7] element of the offense would be that when you did so, your driving privileges were under revocation. Mr. Tovar, on November 18, 1996, did you operate a motor vehicle on a public highway in Story County?

THE DEFENDANT: Yes, sir.

THE COURT: And you were driving on Highway 30 outside of Nevada; is that right?

THE DEFENDANT: I was leaving court here that day at sentencing or whatever.

THE COURT: At the time you were driving, were your driving privileges under revocation?

THE DEFENDANT: Yes.

THE COURT: Mr. Tovar, for the last time, did you still wish to enter this plea of guilty?

THE DEFENDANT: Yes.

THE COURT: Mr. Gonnerman, do you know of any legal cause why I should not accept Mr. Tovar's plea?

MR. GONNERMAN: No, Your Honor.

THE COURT: Mr. Tovar, I find that you have entered your plea of guilty voluntarily, with a full understanding of your rights, with a full understanding of the consequences of your plea. I find a factual basis exists for your plea and I do accept your plea of guilty.

Now that I have accepted your guilty plea, you have another right that I want to tell you about and that is your [8] right to file a motion in arrest of judgment. A motion in arrest of judgment is a motion that you must file if you want to challenge or attack the validity of this plea of guilty. If you think your plea of guilty is defective, you must challenge my acceptance of your guilty plea by filing a motion in arrest of judgment. And, in order for that motion to be effective, you have to file it at least five days before you are sentenced. You have a right to wait at least fifteen days from today before you are to be sentenced. If you wish, you may waive this additional fifteen day waiting period and you may proceed to sentencing today. If you proceed to sentencing today that means that you will be waiving and giving up your right to file a motion in arrest of judgment because you simply would not have time to file that motion before we sentence you. So, what that means is that if you are sentenced today, you are giving up forever your ability to challenge or attack your

guilty plea and the only thing you can appeal is the sentence. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And, did you want to be sentenced today or at a later date?

THE DEFENDANT: Yes, I will just be sentenced today.

THE COURT: Has anyone promised you anything or threatened you in any way in order to convince you to proceed [9] to sentencing at this time?

THE DEFENDANT: No, sir.

THE COURT: Mr. Tovar, I find that you have voluntarily and intelligently waived your right to file a motion in arrest of judgment and your right to have time prior to sentencing. And, the Court will proceed to sentencing at this time, both on this charge of driving under suspension and on your charge of operating while intoxicated. And, Mr. Gonnerman, is there evidence by the State?

MR. GONNERMAN: Yes, Your Honor. The State offers State's Exhibit 1, which is a certified copy of the defendant's driving record.

THE COURT: Mr. Tovar, any objection to Exhibit 1?

THE DEFENDANT: No, sir.

THE COURT: Exhibit 1 is admitted.

MR. GONNERMAN: Your Honor, I would further state to the Court that our records indicate that

Mr. Tovar has no other criminal convictions other than those noted on the driving record.

THE COURT: And, Mr. Tovar, did you have any evidence to submit?

THE DEFENDANT: No.

THE COURT: Mr. Gonnerman, the State's recommendation.

[10] MR. GONNERMAN: State has no recommendations, Your Honor.

THE COURT: Mr. Tovar, before I impose your sentence, you have a right to make a statement. So if there is anything you want to tell me about yourself or about these offenses or any kind of recommendation you want to make, this is your opportunity.

THE DEFENDANT: Well, I just want to know – I mean, if there is any way, you know, they could somehow be like a lesser charge or something because, I mean, I came that day that I was driving under suspension. I am not from around here. So, I didn't have nobody to bring me, and that day I had to come to court for the O.W.I., and then if I didn't come, I would have contempt of court or whatever. That's the only reason why I came. That's the only reason what [sic] I was driving. So, if that could – I mean –.

THE COURT: Anything else?

THE DEFENDANT: That's it, really.

THE COURT: Okay. Well, Mr. Tovar, you pled guilty to the driving under suspension charge, so it won't – it can't be amended to a different charge, so you are stuck with that charge.

THE DEFENDANT: Okay.

THE COURT: Mr. Tovar, on these two charges, I hope the sentence that I am going to impose will accomplish two [11] things: your rehabilitation and protection for our community from further offenses from you. Mr. Tovar, on the charge of operating while intoxicated, you must understand how dangerous and how serious that charge is. You could have easily been involved in a serious accident and killed somebody's child or destroyed a family. You have no right to create that kind of a risk when you drive a car. Mr. Tovar, you need to exercise much better decision-making abilities in the future because you cannot continue to place the lives of innocent people at risk of death or serious injury. The charge of operating while intoxicated carries a mandatory minimum sentence of two days in jail and a payment of a $500.00 fine and that is the sentence I will impose. You are twenty-one years of age. You are in college and you don't have a prior criminal record, so I don't think that something more severe than the mandatory minimum sentence needs to be imposed. And, I think it is the appropriate sentence, Mr. Tovar. I think by the time you spend two days in jail and pay a $500.00 fine, along with surcharge and costs, you will understand how serious the charge is and how important it is that you make responsible decisions. On the charge of driving under revocation, I will impose the mandatory minimum fine of $250.00, along with the thirty percent surcharge and costs. Mr. Tovar, to say you exercised poor decision making skills when you decided to drive to court is to put things mildly. If you don't have a license, Mr. Tovar, you better make [12] appropriate arrangements to get where you have to be without driving. Because if you drive and you get caught, there are going to be serious consequences. And, there are people right now serving a

year in jail on driving under suspension charges because they couldn't stay out of their car and they kept having the penalties increased and increased until finally they had to sit up in jail for a year and that would be obviously a huge waste of a year of your life. So, Mr. Tovar, I hope you take this opportunity to come to the understanding, you don't have a license, as you need to make appropriate arrangements so you don't drive.

It is therefore the order of this court that in Case No. 23989, judgment is imposed and the defendant is adjudged guilty of operating while intoxicated, in violation of Section 321J.2 of the Iowa Code.

The defendant is sentenced to serve two days in the Story County Jail with credit for time served. He's ordered to pay a $500.00 fine, a thirty percent surcharge and costs. the Defendant shall contact the Story County Sheriff's Office no later than January 15, 1997, in order to make arrangements to serve his jail sentence, and that jail sentence shall be served no later than February 15, 1997. The Defendant is given 120 days in which to pay the fine, surcharge and costs.

In Case No. 24089, judgment and conviction are imposed and the Defendant is adjudged guilty of driving under [13] suspension, in violation of Section 321J.21 of the Iowa Code.

The Defendant is ordered to pay a $250.00 fine, a thirty percent surcharge and the costs. The payment to be made within 120 days.

Judgment having been imposed. Mr. Tovar, you do have a right to appeal both sentences. If you want to appeal, you must do so by filing a written notice of appeal with the Clerk within thirty days. If you cannot afford the

costs of appeal, those will be provided for you at the public expense, including the services of an attorney and the preparation of a transcript. Bond on appeal is $650.00 per charge.

Mr. Tovar, you need to check with the Sheriff's office now and they will tell you now much time you have already served and you need to sit down with them and figure out a time when you want to serve your two days. You have got to get those two days done by February 15. You also need to stop up at the Clerk's office and the Clerk will calculate for you exactly how much you owe in both of these cases and they will explain to you how you an send in your payments.

THE DEFENDANT: Okay.

THE COURT: And do you have any questions about your sentences?

THE DEFENDANT: No, sir.

THE COURT: Okay. Both the Sheriff's office and the Clerk's office are up here on the second floor of this [14] building and since you are here, you might as well go ahead and stop at both places today.

THE DEFENDANT: Okay.

THE COURT: You are free to go.

* * *

(COURT REPORTER'S NOTE: At which time, 12:00 Noon, nothing further was had in this matter on this date.)

* * *

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[15] CERTIFICATE OF JUDGE
AND COURT REPORTER
IOWA DISTRICT COURT FOR STORY COUNTY

December 30, 1996

STATE OF IOWA, Plaintiff, v. FELIPE EDGARDO TOVAR, Defendant.	:	No. SRCR024089, OWCR023989

We, the undersigned District Judge and Official Court Reporter in and for the Second Judicial District of Iowa, do respectively certify that we acted as such District Judge and Official Reporter in the trial of the above-entitled cause. That the annexed and foregoing shorthand report is a true, full, and complete record of the proceeding had and the evidence taken in said cause, and contains, with the exhibits, records, and documentary evidence therein referred to and identified, all of the evidence offered, given or introduced in said cause upon the trial or hearing thereof, all objections and motions hereto, or any part thereof, all rulings of the Court upon the same, and all exceptions to such rulings, and contains a full, true, and complete report of all proceedings had and that are required to be kept, all as provided by Sections 624.9, 624.10, and 624.11 of the code of Iowa.

Dated this 30th day of December, 1996.

/s/ Steve Van Marel
Judge of the 2d Judicial District

/s/ Karen K. Hill, CSR, RPR
Official Court Reporter

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[16] CERTIFICATE

I, Karen K. Hill, an Official and Certified Shorthand Reporter for the State of Iowa, do hereby certify that I was present during the above-entitled matter and took down in shorthand the testimony and other proceedings had, that my shorthand notes were subsequently extended into typewriting, and that the foregoing pages constitute a complete transcript of the proceedings had.

Dated this 29th day of March, 2001.

/s/ Karen K. Hill
Karen K. Hill, CSR, RPR

Transcript ordered by Johnson County Attorney's Office

Transcript Mailed: March 29, 2001

STATE'S RESPONSE TO DEFENDANT'S MOTION FOR ADJUDICATION OF LAW POINTS

(Filed April 6, 2001)

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

STATE OF IOWA, Plaintiff, vs. FELIPE EDGARDO TOVAR, Defendant.	)	No. OWCR057355 **State's Response to Defendant's Motion for Adjudication of Law Points**

COMES NOW the State of Iowa, by and through Assistant Johnson County Attorney M. Victoria Dominguez and responds to Defendant's Motion for Adjudication of Law Points in the above-captioned matter, and in support states the following:

1. Count I of the above-captioned matter charges the Defendant with Operating while Intoxicated, Third Offense. To enhance the present offense to a Class "D" Felony, the State relies on a conviction for a violation of § 321J.2 of the Iowa Code in Story County, Iowa, Cause No. OWCR023989.

2. Defendant, through counsel, asserts such conviction may not be used to enhance the present offense because the Defendant was unrepresented by counsel, or in the alternative, did not knowingly, intelligently or voluntarily waived [sic] the right to counsel in Cause No. SRCR042666.

3. Defendant relies on *State v. Rater*, 568 N.W.2d 655 (Iowa 1997) for his position.

ARGUMENT

Defendant asserts the State may not use a prior conviction for an Operating while Intoxicated charge to enhance a subsequent violation if the Defendant was unrepresented by counsel or if the Defendant did not waive his right to counsel under the Sixth Amendment to the U.S. Constitution. The State disagrees with Defendant's interpretation of the Rules of Criminal Procedure and case law cited.

In *State v. Rater*, 568 N.W.2d 655 (Iowa 1997), the Defendant was charged with criminal nonsupport of his children. Prior to trial, counsel was appointed to the Defendant and at some point, the Defendant informed the Court he wanted to proceed pro se. The Court established a stand-by counsel for the Defendant in case he needed any assistance during trial. Five days prior to trial, the Defendant informed the Court he was overwhelmed with the rules and other matters which were imperative to represent himself and requested the Court to appoint counsel to represent him. The Court overruled the Defendant's request and subsequently the Defendant was convicted of the charged offense.

The issue in *Rater* was whether the Defendant had waived his 6th Amendment right to counsel. While *Rater* discusses part of the issue in the present Motion to Adjudicate Law Points, it is not dispositive. The facts as set out in *Rater* are incongruous with those in the present case.

The defendant in the present case entered a guilty plea to Operating while Intoxicated on or about November 18, 1996. Exhibit 1, attached, is a transcript of Defendant's arraignment. Exhibit 2, attached, is a transcript of Defendant's sentencing hearing which took place on or about

December 30, 1996. Close examination of Exhibit 1 shows the Defendant not only waived his right to counsel, it shows he did so voluntarily, knowingly, and intelligently.

The Court in OWCR023989 made the Defendant aware of the rights he was waiving by pleading guilty and noted the defendant waived application for a court appointed attorney. *See page 5, lines 1-5.* The defendant responded in the affirmative when asked if he wanted to represent himself at his arraignment. The defendant was in college at the time, understood the English language, and was able to communicate his desires to the court. The defendant engaged in a colloquy with the Court involving every single right he would have if he plead not guilty and what he was waiving by pleading guilty. The defendant's answers were such that the Court was satisfied the Defendant's waiver was voluntary, intelligent or knowingly. Had the defendant not waived his right to counsel knowingly, voluntarily, and intelligently, there would be a scintilla or trace of such on the record.

WHEREFORE, the State prays this Court hold the defendant's current charge may be enhanced to a Third Offense based on this Defendant's voluntarily, knowingly, and intelligent waiver of his right to counsel in OWCR023989.

Respectfully submitted by:

/s/ M. Victoria Dominguez
M. Victoria Dominguez
Johnson County Attorney's Office

cc: CA
Defendant – Attorney Emily Hughes

[Proof Of Service Omitted In Printing]

IN THE IOWA DISTRICT COURT
IN AND FOR JOHNSON COUNTY

STATE OF IOWA, Plaintiff,	)	No. OWCR057355
vs.	)	JOINT STIPULATION
FELIPE TOVAR, Defendant.	)	(Filed May 8, 2001)

COMES NOW the defendant through counsel, and the State of Iowa through Assistant County Attorney M. Victoria Dominguez, and join together in submitting the following stipulation for the Court to consider:

STIPULATION

1. The State has submitted two transcripts: (1) State's Exhibit A is a transcript from the Story County court dated November 18, 1996; and (2) State's Exhibit B is a transcript from the Story County court dated December 30, 1996.

2. The Defendant stipulates that said transcripts (State's Exhibit A and B) accurately reflect what was said to Mr. Tovar, and what Mr. Tovar said, during these proceedings.

3. The Defendant and the State further stipulate that the transcripts and briefs submitted by both parties may be used to rule upon the defendant's pending Motion for Adjudication of Law Points. The parties hereby waive their right to oral argument in this matter.

Dated this 8th day of May, 2001

/s/ Emily Hughes
EMILY HUGHES
ATTORNEY FOR DEFENDANT
725 South Clinton Street
Iowa City, IA 52240
(319) 351-1327

/s/ M. Victoria Dominguez
M. VICTORIA DOMINGUEZ
ASSISTANT COUNTY ATTORNEY
401 South Clinton Street
Iowa City, IA 52240
(319) 339-6100

Trial Transcript

May 24, 2001

IN THE IOWA DISTRICT COURT
IN AND FOR JOHNSON COUNTY

STATE OF IOWA,	)	
Plaintiff,	)	No. OWCR057355
vs.	)	TRANSCRIPT OF EVIDENCE
FELIPE EDGARDO TOVAR,	)	
Defendant.	)	

The above-entitled case came on for trial before the Honorable Amanda Potterfield, Judge, at the Johnson County Courthouse, Iowa City, Iowa, at 1:32 p.m., May 24, 2001.

APPEARANCES

KAREN EGERTON, Assistant County Attorney, Johnson County Courthouse, 401 South Clinton, P.O. Box 2450, Iowa City, Iowa 52244, representing the State.

EMILY HUGHES, Assistant Public Defender, 725 South Clinton Street, Iowa City, Iowa 52240, representing the Defendant.

Debra A. Shields
Certified Shorthand Reporter
Linn County Courthouse
P.O. Box 5488
Cedar Rapids, Iowa 52406

(Tr. p. 1) **PROCEEDINGS**

(The trial of this case commenced at 1:32 p.m., May 24, 2001, with the Court, counsel and Defendant present.)

THE COURT: We're in court this morning in the matter of the State of Iowa versus Felipe Tovar. Am I getting close to your name?

THE DEFENDANT: Yes, that's correct.

THE COURT: Go ahead and tell me how [sic] like it to be pronounced.

THE DEFENDANT: Felipe.

THE COURT: And your second name?

THE DEFENDANT: My second – my last name?

THE COURT: Your last name.

THE DEFENDANT: It's Felipe, but Tovar is fine.

THE COURT: Good. Mr. Tovar is personally present in court with his attorney, Emily Hughes. The State is represented by Assistant Johnson County Attorney Karen Egerton.

I understand from review of the file and talking with counsel before we came into court that we're here today to examine Mr. Tovar's waiver of jury trial and, if that is what he intends to do and the State does not resist, then to conduct a stipulated trial on the minutes of testimony that would include preservation of error for (Tr. p. 2) any and all orders that have been entered in this matter. Is that correct, Ms. Egerton?

MS. EGERTON: That's my understanding, Your Honor.

THE COURT: Is that your understanding, Ms. Hughes?

MS. HUGHES: Yes, Your Honor.

THE COURT: Mr. Tovar, I have a written waiver of jury trial that seems to have your signature on it; is that correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Have you had enough time to talk with Ms. Hughes about your constitutional rights to a jury trial and the consequences of giving up that right?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you have any questions at all about the rights you are giving up and your decision to proceed to the Court on the minutes of testimony today?

THE DEFENDANT: No, I don't have.

THE COURT: The Court will accept your waiver of jury trial. I understand that there is no resistance by the State to this waiver?

MS. EGERTON: That's correct, Your Honor.

THE COURT: We will proceed then to trial based on the minutes of testimony, which previously were filed (Tr. p. 3) herein on December 14, 2000. Ms. Egerton.

MS. EGERTON: Thank you, Your Honor. The State would offer the two-page minutes of testimony into evidence. Those two pages of minutes of testimony also

include witnesses which would be called by the State, including Diane Tott, who is the Clerk of Court of Story County in Nevada, Iowa, and Lodema Berkley, who is the Clerk of Court in Johnson County here. Their testimony, as set out in the minutes of testimony, indicates that they would offer the certified records of conviction of the two prior offenses, as well as the offer of testimony regarding the impaired driving, that he was driving a motor vehicle on December 7 of 2000.

THE COURT: And those minutes of testimony apply to both Count I and Count II; is that correct?

MS. EGERTON: Yes, Your Honor. Also the Driving While Barred. And this is a witness list on there. Dick Hendrickson, who is from the Department of Transportation, who would testify that Mr. Tovar's license was barred at the time of this offense.

THE COURT: Anything additional for the State?

MS. EGERTON: Only, Your Honor, that we would ask the Court to take judicial notice of Judge Conmey's Ruling on the Motion for Adjudication of Law Points, his ruling dated, I believe, May 14 of 2001, denying the (Tr. p. 4) Defendant's motion.

THE COURT: The State will – the Court will take judicial notice of both the two pages of minutes of testimony and Judge Conmey's order.

Anything further for the State?

MS. EGERTON: No, Your Honor.

THE COURT: For the Defense?

MS. HUGHES: Thank you, Your Honor. In order to preserve our record for appeal on the Motion for Adjudication of Law Points that was filed in this case, we would ask the Court to take judicial notice of both the Motion for Adjudication of Law Points that was filed on March 22, 2001, as well as the Memorandum in Support of the Motion for Adjudication of Law Points that was filed on May 8, 2001. We would like the Court to consider these motions as part of the record.

THE COURT: The Court will grant that application and take judicial notice of the Memorandum of Law and the Motion, which are in the file, along with Judge Conmey's order. I thought I saw a transcript, but maybe not.

MS. HUGHES: There was a transcript attached to the State's resistance to the motion.

THE COURT: And the Court will, of course, take judicial notice of all of the pleadings relating to the (Tr. p. 5) Motion for Adjudication of Law Points, which does include a transcript of proceedings from November, 1996, at the Story County Courthouse.

Anything further for the Defense?

MS. HUGHES: No, Your Honor.

THE COURT: Any rebuttal by the State?

MS. EGERTON: No, Your Honor.

THE COURT: Mr. Tovar, since the matter has been submitted on the minutes of testimony, the pleadings and the other documents in the court file, the Court at this time finds that you are guilty of the two crimes charged in

the Trial Information, that is, Operating While Intoxicated as a Third Offender and Driving While Barred. I will set this matter for sentencing. Court Administrator actually will pick the date. I will order a presentence investigation.

Between now and the time of sentencing, if you want to challenge these proceedings, if you believe that there has been any mistake or a defect made in the course of these proceedings, you will need to file a motion in arrest of judgment. That must be filed at least five days before the date of sentencing. And if you want to do that, Ms. Hughes can tell you more about it. If you don't do that, you will waive the defects, if any, in the proceedings that we've had here in court today. Bond will (Tr. p. 6) continue as previously set.

Anything else we need to do today?

MS. EGERTON: I don't believe so, Your Honor.

THE COURT: Ms. Hughes?

MS. HUGHES: No, Your Honor.

THE COURT: Thank you very much.

THE DEFENDANT: Thank you.

* * *

IN THE IOWA DISTRICT COURT
IN AND FOR JOHNSON COUNTY

STATE OF IOWA, Plaintiff, vs. FELIPE EDGARDO TOVAR, Defendant.	No. OWCR057355 ENTRY OF JUDGMENTS (Filed Sep. 28, 2001)

Defendant appeared in open court this date with his counsel, Emily Hughes. The State was represented by Assistant County Attorney Victoria Dominguez. Statements were made to the Court by counsel and Defendant. No legal cause is shown why judgment should not be pronounced.

On Count I, IT IS THE SENTENCE AND JUDGMENT OF THE COURT, under authority of Iowa Code Sections 321J.2 and 321J.2.2(c) (Operating a Motor Vehicle While Intoxicated – Third Offense), that the Defendant, Felipe Tovar, be sentenced to a period of One Hundred and Eighty (180) days in the Johnson County Jail. All but thirty (30) days of said sentence are suspended, and after said thirty (30) days are served, the Defendant shall be placed on probation for a period of three (3) years to the Sixth Judicial District Department of Correctional Services, subject to their reasonable rules and regulations. Credit is to be given for time previously served in custody on this charge. Said credit shall apply to the unsuspended portion of the sentence.

Defendant shall pay in full the enrollment fee under Iowa Code Section 905.14 at the rate established by the

Sixth Judicial District Department of Correctional Services.

In addition, Defendant is to pay a fine in the amount of Two Thousand Five Hundred Dollars ($2,500.00) plus a surcharge of 30 percent on said fine. Costs are assessed to Defendant.

On Count II, IT IS THE SENTENCE AND JUDGMENT OF THE COURT, under authority of Iowa Code Section 321.561 (Driving While Barred), that the Defendant Felipe Tovar, be sentenced to a period of thirty (30) days in the Johnson County Jail, Iowa City, Iowa. Credit shall be given for time previously served in custody on this charge.

The sentence shall run concurrently with the sentence imposed in Count I.

The fine of $500.00 is suspended. Costs are assessed to the Defendant.

Defendant shall report to the Johnson County Jail, Iowa City, Iowa at 9:00 a.m. on the 2nd day of January, 2002. The Defendant shall be completely sober, free of alcohol and illegal drugs. The Defendant is warned that a test for alcohol will be administered upon entry and that a positive test will be a violation of this order and will lead to further sanctions. The Sheriff shall notify the Clerk of Court and the County Attorney of the Defendant's failure to appear so a decision can be made whether further proceedings against the Defendant are warranted.

IF THE DEFENDANT FAILS TO APPEAR AT THE TIME SET, ANY PEACE OFFICER OF THE STATE OF IOWA IS AUTHORIZED AND DIRECTED, WITHOUT

FURTHER ORDER OF THE COURT, TO TAKE THE DEFENDANT INTO CUSTODY TO BEGIN SERVING THE SENTENCE IMPOSED BY THIS ORDER.

If Defendant is granted accommodation privileges pursuant to Iowa Code Sections 356.25-356.35, Defendant shall serve the sentence in accordance with the Sheriff's rules and regulations and pay the appropriate fees as directed by the sheriff prior to admission.

In the event Defendant fails to report as ordered to jail or not pay court costs as ordered, the County Attorney may file an application for the Defendant to show cause why he should not be held in contempt of the orders of this Court.

Defendant is further ordered to make restitution for court costs and for Public Defender fees at the rate of $50.00 per hour times the hours certified.

The Sixth Judicial District Department of Correctional Services or other supervising agency or institution shall prepare a plan of payment for the fines and restitution for attorney's fees and court costs and submit to the Court for approval.

As a condition of probation, Defendant shall successfully complete substance abuse counseling and treatment, if deemed necessary by the probation officer.

The facts for and reasons supporting the sentence are:

1. Defendant's considerable achievements as a student and in his employment;

2. Defendant's driving record and criminal history record; and

3. It is the hope of the Court that this sentence will rehabilitate the Defendant and protect the community.

Under authority of Iowa Code Section 321J.4.3(a), the Iowa Department of Transportation shall revoke the Defendant's motor vehicle license for a period of six (6) years.

Appeal rights were given to Defendant. Appeal bond is set in the amount of $1,000.00 on Count I and $1,000.00 on Count II, cash or surety.

Appearance bond is exonerated.

Clerk to furnish a copy of this entry of judgment to the County Attorney, Defense Counsel, the Johnson County Sheriff, Sixth Judicial District Department of Correctional Services and the Iowa Department of Transportation.

Dated this 28th day of September, 2001.

/s/ Amanda Potterfield
AMANDA POTTERFIELD,
Judge Sixth Judicial
District of Iowa